

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

KAYLA CLARK, ADMINISTRATRIX AND
ON BEHALF OF ALL HEIRS AT LAW AND
WRONGFUL DEATH BENEFICIARIES
OF JONATHAN SANDERS, DECEASED

PLAINTIFFS

V.

CIVIL ACTION NO. 2:16-CV-101-KS-MTP

KEVIN HERRINGTON, IN HIS OFFICIAL AND
PERSONAL CAPACITIES; CITY OF STONEWALL;
STONEWALL POLICE DEPARTMENT; BOARD OF
ALDERMEN IN THE OFFICIAL CAPACITIES;
AND JOHN DOES 1-10

DEFENDANTS

**MOTION TO QUASH SUBPOENAS SERVED ON CLARKE COUNTY, MS,
DISTRICT ATTORNEY AND MISSISSIPPI BUREAU OF INVESTIGATIONS**

COME NOW, Defendants, Kevin Herrington, in his official and personal capacities, Town of Stonewall, Stonewall Police Department, and Board of Aldermen in their Official Capacities ("Defendants"), through counsel and file this their Motion to Quash Subpoenas, which have been served on Clarke County, MS, District Attorney Bilbo Mitchell and Mississippi Bureau of Investigations ("MBI") Director Lt. Col. Jimmy Jordan, and in support thereof would show unto the Court the following to-wit:

1. On September 9, 2016, Plaintiff Kayla Clark served a Subpoena to Produce Documents, Information, or Objects upon Clarke County, MS, District Attorney Biblo Mitchell and MBI Director Lt. Col. Jimmy Jordan.

2. The Subpoenas requested "[a] certified complete copy of any and all investigative files, including, but not limited to, any and all lab testings, polic and/or incident reports, witness statements and photographs pertaining to Mr. Jonathan Sanders on the date of July 8, 2015." *See* Ex. "A", Subpoena served upon MBI Director Jordan, and *See* Ex. "B", Subpoena served on

Bilbo Mitchell. The certified copies of the respective files are to be produced according to the Subpoena to Plaintiff's attorney's offices by September 23, 2016, at 12:00 p.m.

3. Plaintiff has asserted federal claims against the government, governmental officials and employees pursuant to 42 U.S.C. § 1983. Plaintiff has also asserted various state law claims against Defendants. On August 19, 2016, Defendants filed their Answer and Defenses (ECF No. "4") in which they raised various qualified immunity defenses to all of Plaintiff's federal law claims. Additionally with regard to the state law claims, in their Answer and Defenses Defendants also raised various immunity and exemption defenses pursuant to Miss. Code Ann. § 11-46-1 et seq..

4. Currently, the initial telephonic Case Management Conference with the Magistrate in this matter is set for September 28, 2016 at 3:00 p.m.. Counsel for Defendant will file a Motion to Dismiss this Case asserting various immunity defenses at least seven (7) days prior to the Case Management Conference, which is before the documents and things to be produced under these Subpoenas are due to counsel opposite. *See* Ex. "A" and "B". Upon the filing of this Motion to Dismiss, the "attorney conference and disclosure requirements and all discovery, pending the court's ruling on the motion" will be stayed. L.U.Civ.R. 16(b)(3)(B).

5. The Court should quash production of documents under these Subpoenas at this time. Once the Motion to Dismiss is filed by Defendants, discovery will be automatically stayed pending resolution of the Motion. Plaintiff should not be allowed to obtain documents during the stay, pursuant to a Subpoena which was served prior to the expeditiously filed Motion to Dismiss asserting immunity defenses.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the

Court enter an Order Quashing the Subpoenas which have been served on MBI Director Lt. Col. Jimmy Jordan and Clarke County, MS, District Attorney Bilbo Mitchell for the reasons stated in this Motion. Defendants also request all general relief the Court deems appropriate.

THIS, the 15th day of September, 2016.

Respectfully submitted,

CITY OF STONEWALL

BY: /s/ James C. "Cory" Griffin
J. Richard Barry, MSB #2077
James C. "Cory" Griffin, MSB #104566
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Attorneys for City of Stonewall

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Toney A. Baldwin
BALDWIN & BALDWIN, PLLC
P. O. Box 3199
Jackson, MS 39207

and by U.S. Mail postage prepaid to:

Bilbo Mitchell
Clarke County District Attorney
c/o Lauderdale County Courthouse
500 Constitution Avenue
Meridian, MS 39301

Lt. Col. Jimmy Jordan, MBI Director
Mississippi Bureau of Investigation
P. O. Box 958
Jackson, MS 39205

This the 15th day of September, 2016.

/s/ James C. "Cory" Griffin